

Opinion No. 40-3454

February 29, 1940

BY: FILO M. SEDILLO, Attorney General

TO: Mr. Nolan P. Walter, State Bank Examiner, Santa Fe, New Mexico.

{*140} We have your letter of February 12th requesting an opinion as to Chapter 231, 1939 Laws, the Small Loan Act.

1. You first inquire whether or not the premium fee to cover single interest damage, etc., authorized by Section 11 of the Act may be charged on furniture or other personal property. The statute permits this charge upon loans "secured by automobiles, {*141} trucks or other **similar movable property**." All tangible personal property is movable, and when the legislature used the term "similar movable property" it plainly limited the movable property to be covered to that which is similar to automobiles and trucks. Vehicles are more liable to damage than other personal property. They are sometimes easily movable and therefore easier of conversion. Although I find no cases construing this particular language used also in other states, I am convinced that the legislature intended to be covered by it only property of the class of vehicles, including trailers, etc., but that the fee may not be charged on loans secured by furniture and any other personal property.

2. In your second question you state that some of the small loan operators believe that they may lawfully loan anyone person as much money as they please above \$ 300.00 and make the interest and other charges permitted by the act, so long as any one note does not exceed \$ 300.00. At least one of the bills for which the bill finally enacted as Chapter 231 was a substitute, contained a specific prohibition against anyone person owing the licensee at any one time more than \$ 300.00. This was left out. The act, however, is for the purpose of allowing the high rates of interest therein specified to small loans only. Everything in it points to that conclusion. Furthermore, Section 14 of the act specifically limits those charges not only to **the "loan"** of money in the amounts mentioned, but to the "use for forbearance of money of the amount or value of \$ 300.00 or less." If a man is given the use of money at the high interest and charges allowed by the act in excess of \$ 300.00 at any one time even though in separate loans, I believe it to be a violation of the statute. With this section 14 in the act, the other provision above referred to was unnecessary.

3. Your last question is: "Can a minimum charge of \$ 1.00 be made on small loans where the charges under the small loan act do not amount to \$ 1.00." The proviso in Section 89-109, 1929 Compilation, permitted such a minimum charge of \$ 1.00. Operators under the Small Loan Act are bound, however, by this Act and cannot make this minimum charge.

By: A. M. FERNANDEZ,

Asst. Atty. Gen.